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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/828,406	04/06/2001	Scott Jeffrey Sherr	041892-0205	5175
7590	12/05/2005		EXAMINER	
Foley & Lardner 35th Floor 2029 Century Park East Los Angeles, CA 90067-3021			SALTARELLI, DOMINIC D	
			ART UNIT	PAPER NUMBER
			2611	

DATE MAILED: 12/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/828,406	SHERR ET AL.
	Examiner	Art Unit
	Dominic D. Saltarelli	2611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 17 October 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 80-111 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 80-111 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed October 17, 2005 have been fully considered but they are not persuasive.

First, applicant argues that the combination of Kenney, Garfinkle, and Hoarty do not teach all of the elements of applicant's claims, stating that Hoarty does not describe a carousel as simulating selections available in a video store as in applicant's claims (applicant's remarks, page 17, last paragraph through page 18, first paragraph).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case, the fact that the contents of the carousel taught by Hoarty are virtual video boxes is previously established with the combination of Kenney and Garfinkle and thus not needed to be taught by the Hoarty reference to be taught by the combination of Kenney and Garfinkle with Hoarty.

Further, applicant argues that there is no motivation to combine the cited references. In applicant's remarks, on page 18 second paragraph, applicant states "The fact that discrete elements within the claims can be found somewhere in the prior are, and 'can be used' in combination, does not, without

more, render the combination unpatentable." Additionally applicant states in the next paragraph "A teaching of every limitation therefore is not determinative."

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the primary reference, Kenney, teaches an inventive user interface system for providing services to a home user simulating a virtual retail environment. The secondary reference, Garfinkle, teaches providing services to a home user in the form of video content in a manner that simulates a video rental retail establishment, thus providing motivation for combination with an inventive system that simulates retail environments. The tertiary reference, Hoarty, teaches a simulated carousel presentation on a home display for presenting informational items to a user in a manner that simulates a real world object, thus providing motivation for combination of said carousel with an inventive system that simulates real world objects and environments on a home display.

Claim Objections

2. Claims 80-111 are objected to because of the following informalities: Under 37 CFR 1.121, in the claim listing, the status of every claim must be indicated after its claim number by using one of the following identifiers in a parenthetical expression: (Original), (Currently amended), (Canceled), (Withdrawn), (Previously presented), (New), and (Not entered). The status identifiers of claims 80-111 currently read (Newly Added), wherein the appropriate status identifier is (New).

3. Claim 84 is objected to because of the following informalities: On line 1, "claim 80" should be changed to read --claim 83--. Appropriate correction is required.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 80-82, 85-89, are 95-102 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenney (6,026,376, of record) in view of Garfinkle (5,400,402, of record) and Hoarty (5,485,197, of record).

Regarding claim 80, Kenney discloses a user interface (and corresponding method) for use with a content item delivery apparatus (fig. 2 and col. 3, lines 49-52), comprising a plurality of representations of the content items organized into a plurality of rows (as shown in fig. 4), the plurality of

representations of the content items being user selectable virtual box images (col. 7, lines 8-14).

Kenney fails to disclose the virtual box images are for video products and an interactive interface that simulates lateral motion of images in each row to simulate boxes on a carousel rack in a video rental store, wherein the plurality of selectable virtual video box images of the content items comprise a virtual carousel of selectable virtual video box images capable of simulated movement so that the spinning of a video rental store carousel is simulated on the user interface.

In an analogous art, Garfinkle teaches a video on demand system wherein the paradigm for delivery of said video simulates that of a video rental store, providing a virtual video rental service to customers (wherein a time limit is associated with a downloaded and stored program, col. 3, lines 27-50).

It would have been obvious at the time to a person of ordinary skill in the art to modify the user interface disclosed by Kenney to offer selections from a virtual video store, as taught by Garfinkle, wherein the products shown in the user interface are thus virtual video boxes, providing the benefit of video rental services from the convenience of a users home.

Kenney and Garfinkle fail to disclose an interactive interface that simulates lateral motion of images in each row to simulate boxes on a carousel rack in a video rental store, wherein the plurality of selectable virtual video box images of the content items comprise a virtual carousel of selectable virtual video box

images capable of simulated movement so that the spinning of a video rental store carousel is simulated on the user interface.

In an analogous art, Hoarty teaches a video distribution system wherein selectable content items are displayed upon a rotating carousel that spins to simulate the motion of an actual carousel object and display said content items to a user as a result of said spinning (figs. 35 and 37, col. 18, line 63 – col. 19 line 19), providing an interactive object that is interesting for users to manipulate.

It would have been obvious at the time to a person of ordinary skill in the art to modify the interface and method disclosed by Kenney and Garfinkle to include a virtual carousel of selectable content items capable of simulated movement to simulate spinning of the virtual carousel, as taught by Hoarty, wherein the inclusion of a spinnable virtual carousel object for presenting the virtual video box images simulates the spinning of a video rental store carousel, providing the benefit of an interactive selection display that is interesting to users to manipulate.

Regarding claims 81 and 100, Kenney, Garfinkle, and Hoarty disclose the user interface and method of claims 80 and 99, wherein the plurality of selectable virtual video box images comprise a virtual shelf of selectable virtual video boxes, the virtual shelf being capable of simulated movement so that searching a video rental store shelf is simulated (Kenney, figs. 4-7).

Regarding claims 82 and 101, Kenney, Garfinkle, and Hoarty disclose the user interface and method of claims 80 and 99, but fail to disclose the plurality of selectable virtual video box images may be manipulated in 3D so that all sides of the virtual video box images may be viewed by the user.

However, the official notice taken that it is notoriously well known in the art to display three dimensional objects which are manipulated in 3D space, which provides users with the freedom to interact with a virtual object in the same manner as users interact with physical objects, was not traversed by the applicant, and is thus taken as an admission of the facts therein, see MPEP 2144.03.

Therefore it would have been obvious at the time to a person of ordinary skill in the art to modify the interface and method disclosed by Kenney, Garfinkle, and Hoarty to include the virtual video box representations may be manipulated in 3D so that all sides of the virtual video box representations of the digital video signals may be viewed by the user, providing the benefit of allowing users to manipulated the virtual video box representations in a familiar manner analogous to handling a real, physical video box.

Regarding claims 85 and 102, Kenney, Garfinkle, and Hoarty disclose the user interface and method of claims 80 and 99, and additionally disclose a plurality of user selectable operators for performing functions on the content

items (such as ordering and requesting additional information, Kenney, col. 9, lines 1-6).

Regarding claim 86, Kenney, Garfinkle, and Hoarty disclose the user interface of claim 80, wherein the plurality of user selectable operators comprise choosing search, browse, and display options (Kenney teaches users have the option to search for products, browse the virtual store, and retrieve additional information regarding products, col. 8 line 63 – col. 9 line 6), but fail to disclose the plurality of selectable operators comprise selectable virtual buttons.

The official notice taken that it is notoriously well known in the art to provide virtual buttons on a website for selecting available options, as buttons are intuitively obvious to users as a selection means, was not traversed by the applicant, and is thus taken as an admission of the facts therein, see MPEP 2144.03.

Therefore it would have been obvious at the time to a person of ordinary skill in the art to modify the user interface of Kenney, Garfinkle, and Hoarty to include virtual buttons to allow users to activate the selectable operators, as buttons provide a selection means that is intuitively obvious in use to users.

Regarding claims 87 and 88, Hoarty additionally teaches a user interface which provides the option to search or browse through available movie titles by genre (content) or actor (col. 19, lines 28-45), for the benefit of allowing users to

search or browse through titles that have been filtered according to a user defined criteria.

It would have been obvious at the time to a person of ordinary skill in the art to further modify the user interface disclosed by Kenney, Garfinkle, and Hoarty to include searching and browsing by movie genre or actor, as taught by Hoarty, for the benefit of allowing users to search or browse through titles that have been filtered according to a user defined criteria, which allows users to more easily locate titles of interest.

Regarding claim 89, Kenney, Garfinkle, and Hoarty disclose the user interface of claim 86, wherein the display options comprise a video shelf (Kenney, fig. 4).

Regarding claim 95, Kenney, Garfinkle, and Hoarty disclose the user interface of claim 80, wherein the plurality of representations of the content items comprise textual representations of the content items (Kenney, col. 10, lines 1-9).

Regarding claims 96 and 97, Kenney, Garfinkle, and Hoarty disclose the user interface of claim 95, and Kenney additionally discloses selecting a content item displays additional information (col. 10, lines 10-12) and takes the user to an order page for purchasing the selected content item (the 'lists' used to purchase products, col. 10, lines 45-67), but Kenney and Garfinkle fail to disclose clicking a

left mouse button displays the additional information and clicking a right mouse button takes the user to the order page.

However, designation of specific mouse buttons regarding item selection is completely arbitrary, and Kenney does further teach that the means by which a user clicks on an item for order is distinct from that by which product information is requested (col. 10, lines 45-51).

Therefore, it would have been obvious at the time to a person of ordinary skill in the art to modify the user interface disclosed by Kenney, Garfinkle, and Hoarty to include clicking a left mouse button displays the additional information and clicking a right mouse button takes the user to the order page, providing a distinctive means for a user to both request additional information and order a content item.

Regarding claim 98, Kenney, Garfinkle, and Hoarty disclose the user interface of claim 85, and Kenney additionally discloses the selectable operators comprise a selectable menu for printing (the lists include a 'print' feature, col. 11, lines 3-7).

6. Claims 83, 84, and 103-108 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenney, Garfinkle, and Hoarty as applied to claims 80 and 102 above, and further in view of Kamen et al. (6,421,067, of record) [Kamen].

Regarding claims 83, 84, 103, and 104, Kenney, Garfinkle, and Hoarty disclose the interface and method of claims 80 and 102, but fail to disclose a display area on the user interface for staging of the content item in a user perceptible form comprising a streaming box for playing a movie clip or trailer of a movie.

In an analogous art, Kamen teaches a user interface which includes a decimated region for providing a streaming box for playing previews of available video content (col. 13 line 54 – col. 14 line 3), allowing users to preview available content.

It would have been obvious at the time to a person of ordinary skill in the art to modify the interface and method disclosed by Kenney, Garfinkle, and Hoarty to include a decimated region for providing a streaming box for playing previews of available video content, as taught by Kamen, for the benefit of allowing users to preview available content to determine what may interest them.

Regarding claim 105, Kenney, Garfinkle, Hoarty, and Kamen disclose the method of claim 104, wherein the plurality of user selectable operators comprise choosing search, browse, and display options (Kenney teaches users have the option to search for products, browse the virtual store, and retrieve additional information regarding products, col. 8 line 63 – col. 9 line 6), but fail to disclose the plurality of selectable operators comprise selectable virtual buttons.

The official notice taken that it is notoriously well known in the art to provide virtual buttons on a website for selecting available options, as buttons are intuitively obvious to users as a selection means, was not traversed by the applicant, and is thus taken as an admission of the facts therein, see MPEP 2144.03.

Therefore it would have been obvious at the time to a person of ordinary skill in the art to modify the method of Kenney, Garfinkle, Hoarty, and Kamen to include virtual buttons to allow users to activate the selectable operators, as buttons provide a selection means that is intuitively obvious in use to users.

Regarding claims 106 and 107, Hoarty additionally teaches providing the option to search or browse through available movie titles by genre (content) or actor (col. 19, lines 28-45), for the benefit of allowing users to search or browse through titles that have been filtered according to a user defined criteria.

It would have been obvious at the time to a person of ordinary skill in the art to further modify the method disclosed by Kenney, Garfinkle, Hoarty, and Kamen to include searching and browsing by movie genre or actor, as taught by Hoarty, for the benefit of allowing users to search or browse through titles that have been filtered according to a user defined criteria, which allows users to more easily locate titles of interest.

Regarding claim 108, Kenney, Garfinkle, Hoarty, and Kamen disclose the method of claim 105, wherein the display options comprise a video shelf (Kenney, fig. 4).

7. Claims 90-94 and 109-111 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenney, Garfinkle, and Hoarty as applied to claims 85 and 102 above, and further in view of Fritsch (6,233,682, of record).

Regarding claims 90 and 109, Kenney, Garfinkle, and Hoarty disclose the user interface and method of claims 85 and 102, but fail to disclose a recommendation page for displaying to the user representations of content items determined to be of interest to the user by a recommendation engine based on user criteria.

In an analogous art, Fritsch teaches a website based user interface for retailing content items (fig. 1A, col. 2 line 58 – col. 3 line 3) which includes a recommendation page for displaying to the user representations of content items determined to be of interest to the user by a recommendation engine based on user criteria (col. 4, lines 47-55), assisting the user in locating content of interest.

It would have been obvious at the time to a person of ordinary skill in the art to modify the user interface and method disclosed by Kenney, Garfinkle, and Hoarty to include a recommendation page for displaying to the user representations of content items determined to be of interest to the user by a

recommendation engine based on user criteria, as taught by Fritsch, for the benefit of assisting the user in locating video content items of interest.

Regarding claim 91 and 110, Kenney, Garfinkle, and Fritsch disclose the user interface and method of claims 90 and 109, wherein the content items determined to be of interest to the user by the recommendation engine (which is a software routine) is staged in a display area of the user interface (Fritsch, col. 4, lines 51-55).

Regarding claims 92-94 and 111, Kenney, Garfinkle, and Hoarty disclose the user interface and method of claims 85 and 110, but fail to disclose a MyList page for displaying to the user representations of the content items marked as being of interest to the user by a remember engine which marks the content items based on previous user activities on the user interface, such as selecting content items to obtain more information about selected content items.

In an analogous art, Fritsch teaches providing a suggestions page which displays suggestions of content items to a user compiled based on the transaction history and indicated preferences of the user (col. 4, lines 47-55), assisting the user in locating content items which would likely be purchased by the user.

It would have been obvious at the time to a person of ordinary skill in the art to modify the user interface and method disclosed by Kenney, Garfinkle, and

Hoarty to include a suggestions page which displays suggestions of content items to a user compiled based on the indicated preferences of the user, as taught by Fritsch, wherein such indicated preferences would include content items which the user requested more information about, for the benefit of assisting the user in locating content items which would likely be purchased by the user, aiding the service provider in generating revenue.

Conclusion

8. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with

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all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

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Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dominic D. Saltarelli whose telephone number is (571) 272-7302. The examiner can normally be reached on Monday - Friday 7:00am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Grant can be reached on (571) 272-7294. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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